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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LAI MY LE,

Defendant and Appellant.

D044458

(Super. Ct. No. SCD178403)

APPEAL from a judgment of the Superior Court of San Diego County, Robert F. O'Neill, Judge. Affirmed.

A jury convicted Lai My Le of burglary (Pen. Code, § 459; all statutory references are to the Penal Code) and petty theft with a prior theft conviction (§§ 484/666). It found he had prior convictions of commercial burglary, two convictions of receiving stolen property, a prior conviction of residential burglary (a strike prior), and had served a prior prison term. The court sentenced him to prison for seven years: double the three-year

upper term for burglary with a strike prior enhanced one year for the prior prison term. The court also imposed and stayed a sentence for a conviction of petty theft with a prior theft conviction (654). Le contends the evidence does not support the conviction of burglary.

### FACTUAL BACKGROUND

On December 24, 2002, Karl Huesner parked his Acura outside his home. All the doors were locked and all the windows rolled up. A day or so later, he discovered the car doors unlocked and his stereo system missing from the car. San Diego Police Officer McElroy responded to Huesner's call. He saw pry marks above the window on the driver's side and obtained fingerprints from the inside of the window on the driver's side. The direction of the print was consistent with someone trying to pull the window down from the area of the pry mark. At least one fingerprint matched Le. Huesner did not know Le.

Le testified he put his hands on the window of a car when he was buying "weed" but did not recall the color, make, or year of the car. He did not remember breaking into an Acura around Christmas 2002. He testified he did not steal speakers from a car parked in front of a house identified in a photograph as Huesner's house.

### DISCUSSION

Relying primarily on *People v. Trevino* (1985) 39 Cal.3d 667 and *Mikes v. Berg* (9th Cir. 1991) 947 F.2d 353, Le argues a fingerprint alone without any corroboration is always insufficient evidence to support the burglary and theft convictions. He is mistaken. We affirm a judgment supported by substantial evidence. (*People v. Johnson*

(1980) 26 Cal.3d 557, 576.) Substantial evidence is evidence of legal significance, reasonable in nature, credible and of solid value. (*People v. Samuel* (1981) 29 Cal.3d 489, 505.) The court must review the entire record most favorably to the judgment below and presume in support of the judgment the existence of every fact the fact finder could reasonably deduce from the evidence. If the evidence permits a reasonable trier of fact to conclude the charged crime was committed, the opinion of a reviewing court that the circumstances may also be reconciled with a contrary finding does not warrant reversal. (See *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.)

A burglary conviction need not be based on eyewitness testimony. (See *In re Anthony M.* (1981) 116 Cal.App.3d 491, 501.) Here, there is no question a burglary occurred. The sole issue is the identity of the burglar. Before the use of DNA evidence, "[f]ingerprint evidence [was] the strongest evidence of identity." (*People v. Gardner* (1969) 71 Cal.2d 843, 849.) Here, the jury obviously did not believe Le's explanation of how his fingerprints appeared on the car window. In determining whether the conviction is supported by substantial evidence, we must not usurp the trier of fact's assessment of credibility. (*People v. Thornton* (1974) 11 Cal.3d 738, 754, disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684.)

Le argues this case does not fall within the principle expressed in *People v. Gardner, supra*, 71 Cal.2d 843, but within *People v. Trevino, supra*, 39 Cal.3d 667 and *Mikes v. Berg, supra*, 947 F.2d 353. In *Trevino*, the trial court granted a new trial for Trevino's codefendant Rivas on the ground that fingerprint evidence and vague and uncertain witness identification was not substantial evidence supporting a murder

conviction. In finding the fingerprint evidence insufficient, the Supreme Court pointed out that when the prints were left in the victim's apartment was unknown and since Rivas frequented the apartment as a friend of the murder victim they could have been left anytime. (*People v. Trevino, supra*, 39 Cal.3d at pp. 696-697.) In *Mikes v. Berg, supra*, 947 F.2d 353, a victim was killed in the basement of his fix-it shop. The probable murder weapon was a three-foot post found near the scene. The defendant was convicted of murder based solely on fingerprints taken from the probable murder weapon and two other posts found near the scene of the crime. The prosecution could not determine when the fingerprints were left on the posts. Although the public did not have access to the posts while they were in the basement for four months before the killing, the public did have access to the posts before they were in the basement. Reviewing a habeas corpus proceeding, the reviewing court found a reasonable jury could not determine guilt based on this evidence alone. (*Id.* at pp. 358-359.) In *Taylor v. Steiner* (9th Cir. 1994) 31 F.3d 907, 909, the Ninth Circuit discussed *Mikes v. Berg* and noted the posts could have been in a public place when the fingerprints were left, whereas Taylor's prints were found on the inside of the victim's windowsill, at the point of entry, which was not a public place and Taylor had no access to the windowsill absent unusual circumstances.

Le's case is like *Taylor* as Le's fingerprint was left on the inside of the victim's car window in a place not open to the public, a place to which Le had no legitimate access.

DISPOSITION

The judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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HALLER, Acting P. J.

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AARON, J.